more difficulty with the idea that an offence may be substantially the same as another in its legal characteristics; legal characteristics are precise things and are either the same or not. If I had felt that the doctrine of *autrefois* was the only form of relief available to an accused who has been prosecuted on substantially the same facts, I should be tempted to stretch the doctrine as far as it would go. But, as that is not my view, I am inclined to favour keeping it within limits that are precise."

It is not altogether easy to discover from the speeches of Lord Reid, Lord Hodson and Lord Pearce whether Lord Morris of Borth-y-Gest or Lord Devlin should be taken as expressing the majority view on this issue. But it is unnecessary for their Lordships to express any conclusion in that regard.

If the facts here cannot be brought within Lord Devlin's strict test, they are certainly covered by the alternative form of relief which he favoured as mitigating the rigour of his strict test. The alternative approach is explained at length in the latter part of Lord Devlin's speech and leads clearly to the conclusion in the present case that the conviction proceedings brought by the Law Society against the appellant following the delay proceedings were an abuse of the disciplinary process.

It was for these reasons that their Lordships decided that this appeal must be allowed. The Law Society must pay the appellant's costs before the second Disciplinary Committee, in the show cause proceedings, and before this Board. Having regard to the inordinate delay in instituting the second show cause proceedings after receipt of the Disciplinary Committee's report and to the Law Society's opposition to a stay of execution, their Lordships think it appropriate that all costs ordered to be paid to the appellant should be taxed, if not agreed, as between solicitor and client.

Appeal allowed.

Solicitors: *Kingsford Dorman; Linklaters & Paines.*

CHNG BOON HUAT v. COMPTROLLER OF INCOME TAX

[P.C. (Lord Diplock, Lord Keith of Kinkel, Lord Brandon Of Oakbrook, Lord Brightman, Lord Templeman) July 19, 1984]

[Privy Council Appeal No. 1 of 1982]

Revenue Law – Income Tax – Appeal against assessments – Whether gains from trade of property developer – Decision of fact – Income Tax Act (Cap. 114), s. 10(1)(a).

This was an appeal from the judgment of the Court of Appeal ([1982] 1 M.L.J. 112). The appellant was assessed in 1972 for income tax upon profits for the sale of land in 1966 and 1968. The issue was whether he was carrying on a trade or business dealing in land at the time of each of those sales. The Board of Review held that he was. The High Court and the Court of Appeal upheld the decision of the Board of Review.

Held, dismissing the appeal: the principle laid down in *Edwards* v. *Bairstow* (1) applied in Singapore.

Case referred to:

(1) *Edwards* v. *Bairstow* [1956] A.C. 14.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Lim Chor Pee for the appellant.

D. C. Potter Q.C. (Mrs. Lucy Hangchi with him) for the respondent.

Lord Diplock (delivering oral judgment): The appellant was assessed in 1972 for income tax upon profits for the sale of land in 1966 and 1968. The only issue was whether he was carrying on a trade or business dealing in land at the time of each of those sales.

The Board of Review held that he was and disbelieved him when he said that his intention throughout the period that he held a larger area of land of which the portions sold formed part was to construct flats and houses as an investment.

The principle laid down in this country and applied also in Singapore is that laid down in *Edwards* v. *Bairstow*(1). The judge and the Court of Appeal asked themselves the right question: could a reasonable tribunal reach that decision of fact? Their Lordships agree that it could and indeed doubt whether any other conclusion could be reached.

Their Lordships will accordingly dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Douglas Goldberg & Co.; Jaques & Lewis.*